

1 THE HONORABLE JOHN C. COUGHENOUR
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 DONTE MCCLELLON, an individual

10 Plaintiff,

11 vs.

12 BANK OF AMERICA, N.A., a national
banking association,

13 Defendant.

14 Case No. 2:19-cv-00394-JCC

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**ANSWER TO PLAINTIFF'S
COMPLAINT**

Defendant Bank of America, N.A. ("BANA") hereby provides its answers to the
Complaint of Plaintiff Donte McClellon ("Plaintiff") as follows:

I. PRELIMINARY STATEMENT

1.1 In response to this paragraph, BANA admits the nature of the claims asserted by Plaintiff, and states that all claims other than that for an action under Article 4A of the UCC have been dismissed with prejudice by the Court. BANA denies all allegations of wrongdoing expressed or implied in this paragraph.

1.2 BANA neither admits nor denies the allegations contained in Paragraph 1.2 of the Complaint as it states a legal conclusion and therefore no response is required. To the extent further response is required, BANA denies the allegations and demands strict proof thereof.

1 1.3 BANA neither admits nor denies the allegations contained in Paragraph 1.3 of the
2 Complaint as it states a legal conclusion and therefore no response is required. To the extent
3 further response is required, BANA denies the allegations and demands strict proof thereof.
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5 1.4 BANA denies the allegations of this paragraph.
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7 1.5 BANA denies the allegations of this paragraph.
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9 1.6 In response to this paragraph, BANA admits the nature of the claims asserted by
10 Plaintiff, and states that all claims other than that for an action under Article 4A of the UCC have
been dismissed with prejudice by the Court. BANA denies all allegations of wrongdoing
expressed or implied in this paragraph.
11

12 1.7 BANA admits the allegations of this paragraph.
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14 1.8 BANA denies the allegations of this paragraph.
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16 1.9 BANA neither admits nor denies the allegations contained in Paragraph 1.9 of the
Complaint as it states a legal conclusion and therefore no response is required. To the extent
further response is required, BANA denies the allegations and demands strict proof thereof.
17

18 1.10 BANA admits the allegations of this paragraph.
19

20 1.11 In response to this paragraph, BANA admits that transactions in the stated
amounts took place on the dates stated therein, but denies that the transactions were "fraudulent"
as alleged.
21

22 1.12 BANA neither admits nor denies the allegations contained in Paragraph 1.12 of
the Complaint as it states a legal conclusion and therefore no response is required. To the extent
further response is required, BANA denies the allegations and demands strict proof thereof.
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1 1.13 BANA neither admits nor denies the allegations contained in Paragraph 1.13 of
2 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
3 further response is required, BANA denies the allegations and demands strict proof thereof.
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5 1.14 BANA neither admits nor denies the allegations contained in Paragraph 1.14 of
6 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
7 further response is required, BANA denies the allegations and demands strict proof thereof.
8

9 1.15 BANA neither admits nor denies the allegations contained in Paragraph 1.15 of
10 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
11 further response is required, BANA denies the allegations and demands strict proof thereof.
12

13 1.16 BANA neither admits nor denies the allegations contained in Paragraph 1.16 of
14 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
15 further response is required, BANA denies the allegations and demands strict proof thereof.
16

17 1.17 BANA states that it was notified of the allegedly unauthorized transfers within 60
18 days of their purported occurrences, but denies the allegations of this paragraph to the extent
19 Plaintiff alleges that they are governed by Regulation E.
20

21 1.18 BANA denies the allegations of this paragraph.
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23 1.19 BANA denies the allegations of this paragraph.
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25 1.20 BANA neither admits nor denies the allegations contained in Paragraph 1.20 of
26 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
a response is required, BANA denies the allegations of this paragraph and states that claims
related to a violation of Regulation E have been dismissed with prejudice by the Court.
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28 1.21 BANA denies the allegations of this paragraph.
29

1 1.22 BANA denies the allegations of this paragraph.

2 1.23 BANA denies the allegations of this paragraph.

3 1.24 BANA denies the allegations of this paragraph and states that claims related to a
4 violation of Regulation E have been dismissed with prejudice by the Court.

5 1.25 BANA denies the allegations of this paragraph.

6 1.26 BANA neither admits nor denies the allegations contained in Paragraph 1.26 of
7 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
8 further response is required, BANA denies the allegations and demands strict proof thereof.

9 1.27 BANA neither admits nor denies the allegations contained in Paragraph 1.27 of
10 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
11 further response is required, BANA denies the allegations and demands strict proof thereof.

12 1.28 BANA neither admits nor denies the allegations contained in Paragraph 1.28 of
13 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
14 further response is required, BANA denies the allegations and demands strict proof thereof.

15 1.29 BANA lacks information sufficient to respond to the allegations of this paragraph
16 and therefore denies them.

17 1.30 BANA lacks information sufficient to respond to the allegations of this paragraph
18 and therefore denies them.

19 1.31 BANA lacks information sufficient to respond to the allegations of this paragraph
20 and therefore denies them.

21 1.32 BANA neither admits nor denies the allegations contained in Paragraph 1.32 of
22 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
23

1 a response is required, BANA denies the allegations of this paragraph and states that all claims
 2 other than for breach of Article 4A of the UCC have been dismissed with prejudice by the Court,
 3 and a claim under Article 4A of the UCC does not allow for the recovery of “lost profits.”
 4

5 1.33 BANA neither admits nor denies the allegations contained in Paragraph 1.33 of
 6 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
 7 a response is required, BANA denies the allegations of this paragraph and states that all claims
 8 other than for breach of Article 4A of the UCC have been dismissed with prejudice by the Court,
 9 and a claim under Article 4A of the UCC does not allow for the recovery of “lost profits.”

10 1.34 BANA neither admits nor denies the allegations contained in Paragraph 1.34 of
 11 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
 12 a response is required, BANA denies the allegations of this paragraph and states that all claims
 13 other than for breach of Article 4A of the UCC have been dismissed with prejudice by the Court,
 14 and a claim under Article 4A of the UCC does not allow for the recovery of “lost profits.”
 15

16 1.35 BANA neither admits nor denies the allegations contained in Paragraph 1.35 of
 17 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
 18 a response is required, BANA denies the allegations of this paragraph and states that all claims
 19 other than for breach of Article 4A of the UCC have been dismissed with prejudice by the Court,
 20 and a claim under Article 4A of the UCC does not allow for the recovery of “lost profits.”
 21

22 1.36 BANA lacks information sufficient to respond to the allegations of this paragraph
 23 and therefore denies them.

24 **II. ADDITIONAL INDISPUTABLE FACTS AND ARGUMENT**

25 2.1 BANA denies the allegations of this paragraph.
 26

1 2.2 BANA neither admits nor denies the allegations contained in Paragraph 2.2 of the
2 Complaint as it states a legal conclusion and therefore no response is required. To the extent
3 further response is required, BANA denies the allegations and demands strict proof thereof.
4

5 2.3 BANA neither admits nor denies the allegations contained in Paragraph 2.3 of the
6 Complaint as it states a legal conclusion and therefore no response is required. To the extent
7 further response is required, BANA denies the allegations and demands strict proof thereof.
8

9 2.4 BANA neither admits nor denies the allegations contained in Paragraph 2.4 of the
10 Complaint as it states a legal conclusion and therefore no response is required. To the extent
11 further response is required, BANA denies the allegations and demands strict proof thereof.
12

13 2.5 BANA denies the allegations of this paragraph.
14

15 2.6 BANA neither admits nor denies the allegations contained in Paragraph 2.6 of the
16 Complaint as it states a legal conclusion and therefore no response is required. To the extent
17 further response is required, BANA denies the allegations and demands strict proof thereof.
18

19 2.7 BANA neither admits nor denies the allegations contained in Paragraph 2.7 of the
20 Complaint as it states a legal conclusion and therefore no response is required. To the extent
21 further response is required, BANA denies the allegations and demands strict proof thereof.
22

23 2.8 BANA neither admits nor denies the allegations contained in Paragraph 2.8 of the
24 Complaint as it states a legal conclusion and therefore no response is required. To the extent
25 further response is required, BANA denies the allegations and demands strict proof thereof.
26

1 2.10 BANA neither admits nor denies the allegations contained in Paragraph 2.10 of
 2 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
 3 further response is required, BANA denies the allegations and demands strict proof thereof.
 4

5 2.11 BANA neither admits nor denies the allegations contained in Paragraph 2.11 of
 6 the Complaint as it states a legal conclusion and therefore no response is required. To the extent
 7 further response is required, BANA denies the allegations and demands strict proof thereof.

8 **III. PARTIES**

9 3.1 BANA lacks information sufficient to respond to the allegations of this paragraph
 10 and therefore denies them.

11 3.2 BANA admits the allegations of this paragraph

12 **IV. EXERCISING OF RIGHTS**

13 4.1 BANA denies that Plaintiff is entitled to a jury trial due to a contractual mutual
 14 waiver of such, which was exercised between the parties.
 15

16 **V. PLAINTIFF'S PRAYER**

17 BANA denies that Plaintiff is entitled to any relief.

18 **VI. GENERAL DENIAL**

19 BANA denies each and every allegation contained in Plaintiff's Complaint not
 20 specifically admitted in the Answer.

21 **VII. AFFIRMATIVE DEFENSES**

22 By way of further answer and/or affirmative defenses, BANA states and alleges that the
 23 Complaint should be dismissed in whole or in part based upon the following:
 24

- 25 1. Plaintiff fails to state a claim upon which relief can be granted.
- 26 2. Plaintiff's claims are barred by unclean hands.

3. Plaintiff's claims are barred by the contractual terms and conditions applicable to his account with BANA.

4. Plaintiff's claims are barred by the contractual terms and conditions applicable to the wire transactions in question.

5. Plaintiff's claims are barred because BANA used adequate security procedures to ensure Plaintiff's wiring instructions were authentic.

6. BANA reserves the right to add such other affirmative defenses as the course of discovery and investigation shall dictate.

DATED this 3rd day of June, 2019.

s/Daniel J. Oates

Daniel J. Oates, WSBA No. 39334

s/Katie Loberstein

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Email: dan.oates@miller-nash.com

Attorneys for Defendant Bank of America,
N.A.

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2 **DECLARATION OF SERVICE**
3

4 I, Jennifer L. Schnarr, hereby declare under penalty of perjury under the laws of the United
5 States that on this 3rd day of June, 2019, the foregoing document was served on the Plaintiff via
6 overnight delivery, at the address set forth below.

7 Donte McClellon
8 7909 37th Avenue South
9 Seattle, WA 98118

10 SIGNED at Seattle, Washington this 3rd day of June, 2019.

11 s/Jennifer L. Schnarr
12 Jennifer L. Schnarr, Legal Assistant